

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2022-3035603
	:	
Herbert B. Smith & Agee Copart	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

This Initial Decision grants a Petition for Leave to Withdraw the Formal Complaint filed in this matter by the Bureau of Investigation and Enforcement (BIE). The request to withdraw the Complaint is unopposed and will be granted.

**HISTORY OF THE PROCEEDING**

On September 23, 2022, BIE filed a Formal Complaint against Herbert E. Smith & Agee Copart (Respondent or Smith) alleging that Respondent failed to report its gross intrastate operating revenues for the 2020 calendar year in that it did not file an assessment report for that calendar year. If proven, this would be a violation of Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b). BIE further alleged that Respondent failed to satisfy its 2021-2022 Fiscal Year Assessment in that it did not pay the amount due within 30 days of receipt of the invoice. If proven, this would be a violation of Section 510(c) of the Public Utility Code, 66 Pa.C.S. § 510(c).

The Formal Complaint was served on Smith which did not file an Answer or responsive pleading to the Complaint.

This matter was assigned to then Deputy Chief Administrative Law Judge Joel H. Cheskis as presiding officer.

On November 2, 2022, a hearing Notice was issued setting December 15, 2022, as the date for a hearing in this matter.

On November 3, 2022, Judge Cheskis issued a standard form prehearing Order which was served upon the parties.

On November 9, 2022, BIE filed a Motion for Default Judgment. Respondent filed no Answer or responsive pleading to the Motion.

On November 15, 2022, a Judge Change Notice was issued re-assigning this case to the undersigned.

On December 15, 2022, a telephonic hearing was held pursuant to Notice. Alphonso Arnold, III, Esquire, appeared on behalf of BIE and presented the testimony of Amy Zuvich, the Chief of Finance and Assessments of the Commission. Neither Respondent nor any legal representative of Respondent appeared, and Attorney Arnold renewed BIE's Motion for Default Judgment. A ten-page transcript was filed by the court reporting service on December 29, 2022.

On April 5, 2023, the above captioned case was consolidated with two similar cases for purpose of adjudication in accord with the Commission's regulation at 52 Pa. Code § 5.81(a).<sup>1</sup>

On July 7, 2023, Attorney Arnold withdrew his appearance and Michael L. Swindler, Deputy Chief Prosecutor for BIE, entered his appearance.

On September 14, 2023, a Notice scheduling a further telephonic hearing in this matter was issued setting November 8, 2023, as the date for that hearing.

A further hearing was held in this matter on November 8, 2023. Deputy Chief Prosecutor Swindler appeared on behalf of BIE. Herbert Smith, Jr., appeared as the current owner of a limited liability corporation which, on the basis of Mr. Smith's testimony, may be described as the latest business iteration of Respondent. It was determined at the telephonic hearing held on November 8, 2023, that Respondent owner Herbert B. Smith is deceased and that the Respondent business is no longer operating. These facts are based on information provided by his son, Herbert Smith Jr. The hearing concluded with an agreement by the parties to address the Complaint through settlement discussions after the conclusion of the hearing.

On November 27, 2023, BIE filed a Petition to Withdraw the Complaint in this matter. BIE stated in its Petition that Respondent's certificate of public convenience

---

<sup>1</sup> This case was consolidated with *Pa. Pub. Util. Comm'n v. Canyon Country Cabs*, Docket No. C-2022-3035551, and *Pa. Pub. Util. Comm'n v. Tropiano Airport Shuttle, Inc.*, Docket No. C-2022-3035595. In each of the cases, BIE filed a Complaint alleging failure by the Respondent to pay its Annual Assessment for the 2021-2022 Fiscal Year, which in each case would constitute a violation of Section 510(b) of the Public Utility Code, 66 Pa.C.S. § 510(b), if proven. The case involving Canyon Country Cabs was ultimately resolved and closed separately before the issuance of a Decision and so is no longer before the Commission. On November 8, 2023, an Order was issued rescinding the consolidation of these cases.

had already been cancelled by the Commission on December 28, 2022, that there is no longer any form of relief that BIE is seeking in this formal proceeding, and that it is in the public interest to grant the Petition. The Petition is unopposed.

On December 11, 2023, a transcript consisting of pages 11-22 of the record in this matter was filed by the court reporting service.

The Petition to Withdraw the Complaint is unopposed and is in the public interest and will, therefore, be granted.

### FINDINGS OF FACT

1. The Complainant in this case is the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission.

2. Respondent is Herbert B Smith & Agee Copart and maintained its principal place of business at 1728 Meadow Street, Philadelphia, PA 19124.

3. Respondent is a “public utility” as that term is defined at 66 Pa.C.S. § 102, as it was engaged in transporting property in the Commonwealth of Pennsylvania for compensation.

4. The Commission issued Respondent a Certificate of Public Convenience on or about May 5, 1994, at A-00111095, for truck authority, but that authority was subsequently cancelled on December 22, 2022.

5. BIE filed a Petition to for Leave Withdraw its Complaint on November 27, 2023, and Respondent has no objection to that request.

## DISCUSSION

The Commission's Rules of Practice and Procedure permits parties to withdraw pleadings in a contested proceeding. 52 Pa. Code § 5.94. The provision at Section 5.94, allows the withdrawal of pleadings by a petition for leave to withdraw the pleading. 52 Pa. Code § 5.94(a). The petition must set forth the reasons for the withdrawal and will be granted only by permission of the presiding officer or the Commission. *Id.* The presiding officer or Commission must consider the petition, any objections thereto and the public interest in determining whether to permit withdrawal of the pleading. *Id.*

Having reviewed the request to withdraw, the lack of any objection to the request and considering the public interest, I conclude that the Petition for Leave to Withdraw the Complaint in this matter should be granted. Granting the request to withdraw will not adversely impact the public interest and will conserve administrative hearing resources.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The Commission's Rules of Practice and Procedure permits parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or the Commission. 52 Pa. Code § 5.94.
3. In determining whether to permit withdrawal of the pleading, the presiding officer or the Commission must consider the petition, any objections thereto and the public interest. 52 Pa. Code § 5.94(a).

